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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 24.08.2023

(11)+ MAC.APP. 606/2018 & CM APPL. 26543/2018

(12)+ MAC.APP. 613/2018 & CM APPL. 26594/2018

(13)+ MAC.APP. 626/2018 & CM APPL. 26818/2018

BHIRA & ANR

..... Appellants

Through: Ms.Sonal Singh, Adv.

versus

AMRIT GARG & ANR (ORIENTAL INSURANCE CO)

..... Respondents

VIMLA DEVI & ORS (ORIENTAL INSURANCE CO)

..... Respondents

VIMLA DEVI & ANR (ORIENTAL INSURNACE CO)

..... Respondents

Through: Mr.Ravi Sabharwal, Adv. for Insurance Co.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These appeals have been filed by the appellants challenging the Awards dated 30.03.2015 passed by the learned Motor Accidents Claims Tribunal, North-West District, Rohini, Delhi (hereinafter referred to as the 'Tribunal') in MACT Petition Nos.84/2009, titled *Amrit Garg v. Bhira & Ors.*, 85/2009, titled *Vimla Devi & Ors. v. Bhira & Ors.*, and 86/2009, titled *Vimla Devi v. Bhira & Ors.*, respectively.



2. By the Impugned Awards, the learned Tribunal, while awarding compensation in favour of the Claimants, has directed that the same shall be paid by the Insurance Company, who shall then have a right to recover the same from the appellants herein, that is the driver and the owner of the offending vehicle, that is, truck bearing no.HR-56D-0135. The said right has been granted to the Insurance Company as the appellants had remained *ex-parte* before the learned Tribunal, and in spite of the Insurance Company serving a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 calling upon the appellants to produce the valid permit qua offending vehicle and the driving licence of the driver, had failed to produce the same before the Insurance Company or before the learned Tribunal.

3. The appellants are aggrieved of the right granted to the Insurance Company to recover the compensation amount awarded to the claimants, from the appellants.

4. The appellants contend that the appellant no.1 was holding a valid permit for the offending vehicle, while the appellant no.2 was holding a valid driving licence.

5. This Court, vide its order dated 15.10.2018, *inter-alia* allowed the applications, being CM No.26544/2018 in MAC APP.606/2018, CM No.26693/2018 in MAC APP.613/2018 & CM No.26819/2018 in MAC APP.626/2018, respectively, filed by the appellants to produce additional evidence in form of the Permit of the offending vehicle and the licence of the driver, that is, the appellant no.2 herein. Notice was directed to be issued to the witnesses, that is, from the Regional



offending vehicle, and to the Licensing Authority to depose about the licence produced by the appellants alongwith their appeals before this Court.

6. Pursuant to the above orders, statement of Mr.Subhash, the Transport Sub-Inspector (TSI), Regional Transport Authority, Jind, Haryana, was recorded on 11.01.2019. He duly proved that the appellant no.1 was holding a valid Permit for the offending vehicle as on the date of the accident, that is, 24.03.2007.

7. Statement of Mr.Limatangit, Upper Divisional Assistant, Office of District Transport Office at Wokha, Nagaland, was also recorded on 05.02.2020. He stated that as per records of the Licencing Authority, the purported licence, relied upon by the appellants, had not been issued by the said authority and, in fact, the purported licence claims itself to have been issued on 13.04.2003, which was a Sunday and was a holiday and, therefore, there was no question of the said licence being issued on that day.

8. Faced with the above development and evidence wherein the licence produced by the appellants has been found to be fake, the learned counsel for the appellants now contends that the liability to pay the compensation still cannot be fastened on the appellant no.1 inasmuch as the appellant no.1 had done his due diligence by looking at the driving licence produced by the appellant no.2 and taking his driving test.

9. Placing reliance on the judgments of the Supreme Court in ***United India Insurance Co. Ltd. v. Lehu and Ors.***, (2003) 3 SCC

338; and Rishi Pal Singh v. New India Assurance Co. Ltd & Ors.,



(Judgment dated 26.07.2022 passed in Civil Appeal No.4919 of 2022), the learned counsel for the appellants submits that it is for the Insurance Company to prove that the appellant no.1, owner of the offending vehicle, had not conducted due diligence to test the veracity of the driving licence of the driver of the offending vehicle, that is the appellant no.2 herein. She submits that as the appellant no.1 has contended that he had done necessary due diligence, liability to reimburse the compensation cannot be fastened on the appellant no.1.

10. On the other hand, the learned counsel for the Insurance Company submits that there is no plea taken by the appellant no.1 before the learned Tribunal or before this Court that he had done due diligence to test the authenticity of the driving licence of the driver/appellant no.2. He submits that the appellant no.1/owner, in fact, remained *ex-parte* before the learned Tribunal. Thereafter, the appellant no.1 filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 seeking recall of the Award passed. The said application was dismissed by the learned Tribunal vide order dated 18.05.2017. The appellant no.1/owner alongwith the driver of the offending vehicle, that is the appellant no.2 herein, filed these appeals jointly, placing reliance on the driving licence which is *ex facie* fake and not genuine. He submits that now the appellant no.1 cannot be allowed to disown the repercussions of producing a fake driving licence of the appellant no.2 in support of the present appeals.

11. I have heard the submissions made by the learned counsels for the parties.

12. From the statement of Mr.Limatangit, it is evident that the
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driving licence produced by the appellants alongwith the present appeals is not genuine.

13. In **Lehru** (supra), the Supreme Court held that where the owner has satisfied himself that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(a)(ii) of the Act; the owner is not expected to make enquiries with RTOs, which are spread over the country, whether the driving licence shown to them is valid or not. The relevant observations of the Supreme Court in **Lehru** (supra) are reproduced below:

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia and Kamla cases. We are in full agreement with



the views expressed therein and see no reason to take a different view.”

14. In ***Rishi Pal Singh*** (supra), the Supreme Court has reiterated that the owner of the vehicle is expected to verify the driving skills and not run to the licencing authority to verify the genuineness of the driving licence before appointing a driver. Once the owner is satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving licence issued to the driver. However, in ***National Insurance Co. Ltd. v. Swaran Singh & Ors.***, (2004) 3 SCC 297, the Supreme Court explained that the above observations of the Supreme Court in ***Lehru*** (supra) “*must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish willful breach on the part of the insured and not for the purpose of disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever.*” It was further held as under:

“99. So far as the purported conflict in the judgments of Kamla and Lehru is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case.

100. This Court, however, in Lehru must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case.

101. The submission of Mr Salve that in



Lehru case, this Court has, for all intent and purport, taken away the right of an insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver.”

15. Applying the above principles to the facts of the present case, the plea of the appellant no.1 that he had taken due care and caution to satisfy himself that the driving licence of the appellant no. 2 was genuine, cannot be accepted. The address of the appellant no.2, in the driving licence produced by the appellants, is reflected as under:

“NAME: JAGBIR SINGH
SON OF: SH. GAJE SINGH
ADDRESS: T/A WOKHA TOWN
P/A VILLAGE BALU
DIST. KAITHAL (H.R.)”

16. The licence is claimed to have been issued by the Regional Transport Office at Nagaland. It cannot be believed that this was not sufficient for the appellant no.1 to doubt the authenticity of the licence that was produced by the appellants jointly with the present appeals.

17. The driving licence further claims itself to have been issued on 13.04.2003, which was a Sunday. The driving licence, on the face of it, was therefore fake and not genuine.

18. The plea of the appellant no.1 that he had done due diligence for obtaining the copy of the driving licence from the driver of the offending vehicle, therefore, cannot be believed. In fact, it is apparent that the appellant no.1/owner is in connivance with the appellant



order to mislead this Court.

19. The appeals and the pending applications are dismissed with costs quantified at Rs.1 lakh to be deposited by the appellants with the Delhi High Court Legal Services Committee within a period of eight weeks from today.

NAVIN CHAWLA, J

AUGUST 24, 2023/Arya/ss

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